

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LEA ARELLANO, et al.,

Plaintiffs,

v.

LISA VOGEL, et al.,

Defendants.

No. C 10-4534 PJH

**ORDER GRANTING MOTION  
TO REMAND AND VACATING  
HEARING DATE**

The court is in receipt of plaintiffs' motion to remand the action, and defendants' motions to dismiss, set for hearing on December 15, 2010 before this court. Today – one day before the hearing, and outside the time limits contemplated by Civil Local Rule 7-7(e) – defendants Lisa Vogel ("Vogel") and We Want the Music Company ("WWTMC") filed a notice of withdrawal requesting that both their opposition to plaintiffs' motion to remand, and their motion to dismiss, be taken off calendar. Having read all the papers submitted and carefully considered the relevant legal authority, the court hereby GRANTS plaintiffs' motion to remand, for the reasons detailed below and in light of the foregoing defendants' recent notice of withdrawal of their opposition. Defendants Vogel and WWTMC's motion to dismiss is also WITHDRAWN, and the court DENIES the remaining defendants' motions to dismiss as moot.

The parties' dispute in connection with plaintiffs' motion to remand revolves around a single issue: determining the state of citizenship for corporate defendant WWTMC and individual defendant Vogel. As a preliminary matter, both parties agree on the relevant legal standards to be applied in making this determination. With respect to determining a corporation's citizenship, a corporation is deemed to be "a citizen of any State by which it

1 has been incorporated and of the State where it has its principal place of business.” See  
2 28 U.S.C. 1332(c). In determining in turn a corporation’s principal place of business, the  
3 Supreme Court has recently clarified that “‘principal place of business’ is best read as  
4 referring to the place where a corporation’s officers direct, control, and coordinate the  
5 corporation’s activities.” See Hertz Corp. v. Friend, 130 S.Ct. 1181 (2010). In other words,  
6 it is the place that various appellate courts – including the Ninth Circuit – have previously  
7 called “the corporation’s ‘nerve center.’” Id. An individual’s state of citizenship, by contrast,  
8 is determined by the state in which the individual is domiciled. See Kanter v.  
9 Warner-Lambert Co., 265 F.3d 853 (9th Cir. 2001)(“A person’s domicile is her permanent  
10 home, where she resides with the intention to remain or to which she intends to return”).

11 The parties also agree that the burden of persuasion for establishing diversity  
12 jurisdiction remains on the party asserting it. See Kokkonen v. Guardian Life Ins. Co. of  
13 America, 511 U.S. 375, 377 (1994). Here, because the instant action was removed from  
14 state court by defendants WWTC and Vogel, that means that defendants bear the burden  
15 of persuasion in establishing the propriety of diversity jurisdiction in the face of plaintiffs’  
16 motion to remand.

17 Turning to the merits of the remand motion, the court first addresses the parties’  
18 arguments as to WWTC’s citizenship. To determine WWTC’s citizenship, the court  
19 must identify the state in which WWTC has its “principal place of business,” and more  
20 specifically, whether this state is California (as plaintiffs contend), or Michigan (as  
21 defendants contend).

22 In arguing that WWTC’s principal place of business is located in California,  
23 plaintiffs point out: WWTC has an office located in Oakland, California, which is staffed by  
24 defendant Vogel – who is an executive officer of WWTC – and other full-time employees  
25 of WWTC 8 to 9 months out of every year; that several of the named plaintiffs had  
26 contacts with WWTC and Vogel in the Oakland office related to volunteer activities, and  
27 for purposes of making arrangements to attend the festival put on in Michigan by WWTC;  
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1 that WWTMC's website indicates that audition tapes for the 2011 music festival should be  
 2 mailed to WWTMC's P.O. Box in California, and that the Michigan address for WWTMC  
 3 listed on the website has all mail forwarded to WWTMC's California P.O. Box; that  
 4 WWTMC owns a vehicle registered in California, has a telephone number listed in the  
 5 Oakland directory, and has full-time employees who are full time residents of Alameda  
 6 County; and that although WWTMC's registered address for service of process is in  
 7 Michigan, the address listed does not correspond with WWTMC's business, and WWTMC  
 8 was in fact served with process at the Oakland office. See, e.g., Dineen Decl., ¶¶ 5-8;  
 9 Osborne Decl., ¶¶ 4, 8, 16; Arellano Decl., ¶¶ 5-6; Drucker Decl., ¶¶ 5-6; Nossardi Decl., ¶  
 10 4; see also Coates Decl., ¶ 11; id. at Exs. 1, 3, 7-8, 11; Youmans Decl., ¶¶ 10-12, id. at  
 11 Exs. 4-5.

12 Defendants, by contrast, contend that plaintiffs' cited facts are insufficient to  
 13 establish that California is actually WWTCM's "nerve center," because none of the facts  
 14 relied on by plaintiffs establish that WWTCM's activities are directed, controlled, or  
 15 coordinated from the California office. Rather, defendants assert that the following  
 16 demonstrate that the primary direction and control of the annual festival that WWTCM is  
 17 tasked with executing occur in Michigan, not California: Michigan's office is open and  
 18 employs full time employees for 3 months out of each year (coinciding with the festival); the  
 19 California staff relocates to Michigan every June, shutting down the California office  
 20 completely; that during the foregoing 3 months, WWTMC's executive management  
 21 prepares for and produces the annual festival in Michigan; that this direction and control  
 22 during the summer months involves processing 90 to 95% of ticket sales for the festival,  
 23 evaluating and coordinating production equipment, purchasing gas, plumbing, and food for  
 24 the festival, coordinating the building of stages and installing electrical, water, and phone  
 25 systems for the festival; and that 3 to 4 weeks are spent in Michigan after each summer's  
 26 festival, planning and coordinating for the next year's festival. See, e.g., Vogel Decl. ISO  
 27 Remand Opp., ¶¶ 16-35. According to defendants, it is the "administration" of the "results  
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1 of the planning meetings in Michigan” that continue during the remainder of the business  
2 year at WWTCM’s California office.

3           While the parties’ competing positions present a close question for the court, the  
4 close nature of the question ultimately counsels in favor of remand. It is apparent, for  
5 example, that WWTCM has an actual presence in Michigan for 3 to 4 months out of the  
6 year, during which time WWTCM’s Michigan office dedicates itself entirely to putting on and  
7 producing the music festival that is WWTCM’s primary objective. It is also apparent,  
8 however, that for the remaining 8 to 9 months of the year, WWTCM’s staff is based in the  
9 California office, and runs all functions relating to the festival from there. And while  
10 defendant seeks to label these functions as mere “administrative” functions that are  
11 somehow distinct from those functions involving direction, control, and coordination of  
12 WWTCM’s activities, defendants present no facts that adequately or clearly distinguish the  
13 “administrative” functions performed by the Oakland office during the majority of each year,  
14 from those performed by WWTCM’s Michigan office during the summer months. Moreover,  
15 plaintiffs correctly point out that, the “nerve center” test as previously illuminated by the  
16 Ninth Circuit prior to its adoption by the Supreme Court, acknowledged that a corporation’s  
17 principal place of business is not simply coterminous with the presence of “executive”  
18 functions, but “administrative” ones, as well. See, e.g., Industrial Tectonics, Inc. v. Aero  
19 Alloy, 912 F.2d 1090, 1092 (9th Cir. 1990). Thus, defendants’ failure to adequately  
20 distinguish WWTCM’s administrative functions from its purported executive functions,  
21 makes a ready answer difficult to ascertain.

22           In view of the parties’ competing factual showings, and the uncertainty that results  
23 from attempting to cull from these showings a definitive answer as to WWTCM’s actual  
24 “nerve center,” the court is unable to affirmatively find that WWTCM is a citizen of Michigan  
25 – as defendants assert, and as is necessary for the court to exercise diversity jurisdiction  
26 over the action. Accordingly, the court is bound to resolve such uncertainty in favor of  
27 remand. See Guas v. Miles, Inc., 980 F.2d 564 (9th Cir. 1992)(doubts about removability  
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1 are resolved in favor of remanding the case to state court); Shamrock Oil & Gas Corp. v.  
2 Sheets, 313 U.S. 100, 108-09 (1941).

3 In view of the foregoing analysis, the court finds it unnecessary to determine  
4 defendant Vogel's actual state of citizenship, and notes only that some of the same factual  
5 uncertainties arising in the context of WWTCM's citizenship, also arise in connection with  
6 Vogel's citizenship.

7 For all the foregoing reasons, and furthermore in light of Vogel and WWTCM's non-  
8 opposition to plaintiffs' motion to remand, the court hereby GRANTS plaintiffs' motion.  
9 Because remand is granted, the court does not reach the substance of defendants'  
10 corresponding motions to dismiss and those motions are DENIED as moot, in view of the  
11 remand. The denial is, of course, without prejudice to the renewal of the motions in state  
12 court, if appropriate.

13 The hearing on the parties' motions, originally set for December 15, 2010, is hereby  
14 VACATED.

15 **IT IS SO ORDERED.**

16 Dated: December 14, 2010



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18 PHYLLIS J. HAMILTON  
19 United States District Judge  
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